

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re ALBERT G., et al.,

Persons Coming Under the Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

RUBY C.,

Defendant and Appellant.

B214834

(Los Angeles County  
Super. Ct. No. CK50293)

APPEAL from an order of the Superior Court for Los Angeles County, Jan G. Levine, Judge. Affirmed.

Deborah Dentler, under appointment by the Court of Appeal, for Defendant and Appellant.

James M. Owens, Assistant County Counsel, and Navid Nakhjavani, Associate County Counsel, for Plaintiff and Respondent.

Ruby C. (mother) appeals from an order of the juvenile court terminating her parental rights as to her sons, Albert G. and Abel C., under Welfare and Institutions Code<sup>1</sup> section 366.26.<sup>2</sup> Mother contends the juvenile court erred by denying her request to file a section 388 petition on the day of the section 366.26 hearing. Finding no error, we affirm the order.

## **BACKGROUND**

Albert was detained by the Los Angeles County Department of Children and Family Services (the Department) after he tested positive for methamphetamine at his birth in July 2006. Mother, who tested positive for both methamphetamine and marijuana at Albert's birth, admitted that she used both drugs daily during her pregnancy, except during the last three months, when she used the drugs only once per week. Although mother had four other children, she did not have custody of any of them. In fact, mother's next-oldest child, Andrew C., was detained after he tested positive for methamphetamine at his birth in September 2002, and mother's parental rights were subsequently terminated.

In August 2006, the juvenile court sustained a petition alleging that Albert was a dependent child under section 300, subdivisions (b) and (j), and denied family reunification services for mother under section 361.5, subdivision (b)(10), (11), and (13). The juvenile court set a hearing for December 5, 2006, to select a permanent plan under section 366.26, but that hearing was repeatedly continued

---

<sup>1</sup> Further undesignated statutory references are to the Welfare and Institutions Code.

<sup>2</sup> The juvenile court also terminated the parental rights of each child's father, neither of whom was named on the children's birth certificates. The alleged fathers are not parties to this appeal.

for various reasons and no selection was made for two and a half years. Albert remained in foster care throughout that time.

In the meantime, mother gave birth to Abel in January 2008. Like Albert, Abel tested positive for methamphetamine at birth and was detained. The juvenile court found that Abel was a dependent child under section 300, subdivision (b), denied family reunification services to mother under section 361.5, subdivision (b)(10), (11), and (13), and set a permanent plan hearing under section 366.26. Abel could not be placed with Albert because Albert's foster parents could not accept any more children; therefore, Abel was placed with different foster parents who were interested in adopting him.

Mother did not visit, or even attempt to arrange any visits, with either child until July 2008, when Albert was two years old and Abel was seven months old. At a hearing in late July 2008, mother reported that she was trying to arrange visits but was told by the social worker that she was not entitled to visitation. The juvenile court told her that she *was* allowed visitation. In a status review report filed two months later, the Department stated that mother had never contacted the social worker to initiate visitation or to ask about either child, and that she had not seen either child since she left the hospital after their births. At a hearing in October 2008, mother's counsel told the court that mother had repeatedly contacted the social worker about visitation, but that the social worker never returned mother's calls. After that hearing, the social worker contacted mother, who said she wanted to initiate visits with Abel. She had her first visit with Abel in November 2008, and another visit in December 2008. She then entered a residential drug treatment program, and told the social worker that she could not have any visits for a month, until January 25, 2009.

In the meantime, on January 9, 2009, mother filed a petition under section 388, asking the juvenile court to change the order denying her family reunification

services as to Abel. She asserted there were changed circumstances because she had enrolled in parenting, chemical dependency, and substance abuse classes through Homeboy Industries, and she had entered into an in-patient drug rehabilitation program. She also asserted that, although the Department had thwarted her ability to visit Abel as often as she would have liked, she was the only parent involved in his life and it would be detrimental to deprive him of his mother's love and care. She attached letters from Homeboy Industries and Mujeres Residential Recovery Home to show that she had enrolled in her classes in October 2008 and entered the residential program on December 25, 2008.

The juvenile court denied the petition at a hearing on January 15, 2009, finding there had been no change of circumstances because mother had been in drug rehabilitation for less than a month and had not yet completed the treatment she needed. At that hearing, which was a section 366.26 hearing for both children, the court indicated that it was not prepared to terminate mother's parental rights as to Albert because he had just recently been placed with a new prospective adoptive parent.<sup>3</sup> While discussing possible dates for the continued section 366.26 hearing, mother's attorney asked to set the hearing for contest as to Abel. The court set the hearing for both children on March 19, 2009.

In two reports filed in advance of the continued hearing, the Department discussed mother's visits with Albert and Abel. The Department stated that the first time mother ever spoke to a social worker about visitation with Albert was on January 29, 2009, after a visit with Abel. Albert was two and a half years old at

---

<sup>3</sup> In October 2006, Albert was placed with foster parents who had expressed an interest in adoption, but by July 2008 they had changed their minds. The Department investigated other family members of the foster parents, none of whom was appropriate, and finally identified a new prospective adoptive parent and placed Albert in her care in December 2008.

that time. The report also stated that mother did not initiate visitation with Abel for the first 10 months of his life.<sup>4</sup> By the time of the report, mother had had a total of five visits with Abel, and two visits with Albert. The report also noted that during her visits with Abel, mother seemed disconnected and lacked the ability to engage him; she did not seem to know what to do with him and did not initiate activities. During her visits with both children, mother paid most of her attention to Abel, and only interacted with Albert if he came over to Abel. She did not address either child's basic needs during the visits -- she did not offer to change Abel's diapers, did not ask Albert if he needed to go to the bathroom, and did not ask whether the children needed lunch or snacks.

The Department also reported that after a visit with the children on February 12, 2009, the social worker asked mother if she was pregnant. Mother said she was not. At the next visit two weeks later, the social worker asked the director of mother's programs (who had driven mother to the visit) if mother was pregnant, and she said mother was, and that the baby was due in April. In a letter attached to the report, the residential manager of mother's residential treatment program stated that mother was very compliant, that she had nine unannounced drug tests that were all negative, and that she would be completing her program on April 25, 2009.

At the continued section 366.26 hearing on March 19, 2009, mother's attorney stated that he had prepared another section 388 petition he wished to file. He explained that he would have filed the petition earlier, but he did not have all of the information he needed from mother's residential program until mother

---

<sup>4</sup> This statement is somewhat misleading. As noted above, mother indicated at a hearing in July 2008 (when Abel was six months old) that she had contacted the social worker and was told she was not entitled to visitation; in October 2008, she indicated that she had contacted the social worker several times but the social worker did not return her calls.

provided it that day. He asked that he be allowed to file the petition so the court could look at the new information to see if there might be a reason to grant a hearing.

The court noted that mother had filed a section 388 petition two months earlier, in January 2009, shortly after she started her programs and residential drug treatment. The court stated that it had denied that petition, and would deny the current petition (had it been timely filed) for the same reason: mother had not yet completed her programs, and until she did so and lived a clean and sober lifestyle for a period of time, the court could not recognize a change in circumstances. Mother's attorney nevertheless asked that mother be allowed to file the petition, even if the court was going to deny it. The court denied mother permission, stating that the petition was not timely.

The court then turned to the section 366.26 hearing. The court received into evidence various reports offered by the Department. Mother presented no evidence. Following argument, the juvenile court terminated mother's parental rights as to both children.

That same day, mother, acting in propria persona, filed a Judicial Council form entitled "Notice of Intent to File Writ Petition and Request for Record to Review Order Setting a Hearing Under Welfare and Institutions Code Section 366.26." Although the document as filled out by mother refers to an order made on March 19, 2009, the form states that it was an order setting a section 366.26 hearing, rather than an order resulting from a section 366.26 hearing. Nonetheless, the clerk of the juvenile court treated the document as a notice of appeal, and sent a "Clerk's Notification of Filing of Notice of Appeal (WIC § 366.26)" to the Department and its counsel.

## DISCUSSION

As a preliminary matter, we address the adequacy of the document mother filed to initiate the appellate process. In her opening brief on appeal, mother, represented by appointed counsel, argues that the document she filed in propria persona -- the form notice of intent to file a writ petition -- should be construed as a notice of appeal because it clearly signaled that she intended to appeal from the matters decided at the March 19, 2009 section 366.26 hearing. We agree. As the Supreme Court has observed, “[i]t is, and has been, the law of this state that notices of appeal are to be liberally construed so as to protect the right of appeal if it is reasonably clear what [the] appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced.” (*In re Joshua S.* (2007) 41 Cal.4th 261, 272.) Here, the document mother filed identified the date of the order she was challenging, and the Department does not claim it was misled or prejudiced by it. Indeed, the Department received notification within days after mother filed her document that indicated that the clerk of the juvenile court was treating the document as a notice of appeal from the order arising from the section 366.26 hearing. Therefore, we construe mother’s notice of intent to file a writ petition as a timely notice of appeal from the March 19, 2009 order.

The only issue mother raises in her appeal concerns the juvenile court’s refusal to allow her to file a section 388 petition at the section 366.26 hearing. She contends the court denied her due process because it prevented her from presenting evidence to support her request for reunification services once she completed her drug treatment program. We find no reversible error.

To be entitled to a hearing on a section 388 petition, a parent must make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) As mother’s counsel explained when he asked for permission to file the

petition, mother's request for a change of order was based upon her participation in her drug treatment program. But the juvenile court had already denied a similar petition two months earlier on the ground that her participation in the program, while commendable, did not constitute changed circumstances because she had not yet completed the program.

Even if the new petition might have contained additional details about her participation in the program, the fact remained that she had not yet completed the program. Moreover, because mother had been denied reunification services, her interest in the care, custody, and companionship of the child was subordinate to the needs of the children for permanency and stability. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464.) In light of the severity of mother's drug problem -- she had been using methamphetamines for at least six and a half years, and had her parental rights terminated as to at least one child and lost custody of Albert and Abel due to her drug use -- the court could reasonably find that even if mother was very close to completing the four-month residential drug program, that would be insufficient to demonstrate changed circumstances. (See, e.g., *In re Mary G.* (2007) 151 Cal.App.4th 184, 206 [“A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent . . . might be able to reunify at some future point, does not promote stability for the child or the child's best interests. . . . “[C]hildhood does not wait for the parent to become adequate””]; *In re Angel B., supra*, 97 Cal.App.4th at p. 463 [completion of drug program insufficient by itself to show changed circumstances where mother's drug problem was long standing and there was no evidence that mother was ready to provide suitable care for child].)

Here, mother had never lived with either child, had had only a handful of visits with them and, as shown by the social worker's observations of those visits, she did not appear to know how to care for them. Clearly, it would take



considerable time in monitored settings before she could be found capable of caring for the children. But by the time she requested to file her section 388 petition, Albert had been in the dependency system for almost three years, and Abel for more than a year, and both children were living with prospective adoptive parents. In light of the facts of this case, we hold the juvenile court did not abuse its discretion by denying mother's request to file an untimely section 388 petition and by terminating mother's parental rights.

### **DISPOSITION**

The order terminating mother's parental rights as to Albert and Abel is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

WILLHITE, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.